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APPENDIX

Supreme Court, U.S.
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SUPREME COURT OF THE UNITED STATES

October Term, 1971

No. 71-517

ELISHA COMBS,

Petitioner,

—v.—

UNITED STATES.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Petition For Certiorari Filed October 9, 1971
Certiorari Granted January 10, 1972

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

No. 71-517

ELISHA COMBS,

Petitioner,

—v.—

UNITED STATES.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS

RELEVANT DOCKET ENTRIES

No.	Pleading	Date Filed
1.	Indictment	March 2, 1970
2.	Motion to Suppress Evidence	Sept. 18, 1970
3.	Judgment and Commitment; Two years and $5,000.00 fine	Oct. 1, 1970
4.	Motion for a New Trial	Oct. 1, 1970
5.	Notice of Appeal, Sixth Circuit Court of Appeals	Oct. 1, 1970
6.	Opinion of Sixth Circuit Court of Appeals affirming trial court	Aug. 21, 1971
7.	Petition for Rehearing	Aug. 25, 1971
8.	Order denying Petition for Rehearing	Sept. 15, 1971
9.	Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit	Oct. 9, 1971
10.	Petition for Writ of Certiorari granted	Jan. 10, 1972

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
MARCH SESSION 1970
COVINGTON

NO. 10746

UNITED STATES OF AMERICA
vs.
ELISHA COMBS, PEARL COMBS, and
RAYMOND COMBS

COUNT 1.

(TITLE 18, SEC. 659, USC)

THE GRAND JURY CHARGES:

That on or about the 1st day of August, 1969, in the Eastern District of Kentucky,

ELISHA COMBS and
PEARL COMBS

unlawfully, wilfully and knowingly did receive, possess and conceal chattels of a value in excess of $100.00, that is twenty-six (26) cases of Seagram's Seven Crown Whiskey, each containing a label with the number 693 thereon and indicating the consignee of said whiskey to be the Michigan Liquor Control Board, with the following individual identifying markings:

Production Date	Serial Number
7/23/69	K640339
"	K640344
"	K640346
"	K640348
"	K640352
"	K640364
"	K640367
"	K640387
"	K640680
"	K640681
"	K640682
"	K640683
"	K640684
"	K640685
"	K640686
"	K640691
"	K640697
"	K640706
"	K640711
"	K640712
"	K640713
"	K640796
"	K640798
"	K640816
"	K640819
"	K640820

which was part of a shipment which had been embezzled, stolen and unlawfully taken and carried away from the All Ohio Express Terminal, 3411 Spring Grove Avenue, Cincinnati, Ohio, on or about July 28, 1969, while moving in interstate commerce, from Lawrenceburg in the State

of Indiana, to Toledo, in the State of Ohio, the said Elisha Combs and Pearl Combs then knowing that said chattels had been stolen.

COUNT 2.

(TITLE 18, SEC. 1510, USC)

That on or about the 4th day of October, 1969, at Newport, Campbell County, in the Eastern District of Kentucky,

ELISHA COMBS and
RAYMOND COMBS

unlawfully and wilfully did injure the person of James Lee Martin on account of his having given to a Special Agent of the Federal Bureau of Investigation, information relating to a violation of a criminal statute of the United States, in violation of Title 18, Section 1510, United States Code.

COUNT 3.

(TITLE 18, SEC. 1510, USC)

That on or about the 30th day of September, 1969, at Newport, Campbell County, in the Eastern District of Kentucky,

ELISH COMBS

unlawfully and wilfully did endeavor by means of intimidation and threats thereof, to obstruct and prevent the communication of information relating to a violation of a criminal statute of the United States, from one Janet Sue Martin Ballard to a Special Agent or Agents of the Fed-

eral Bureau of Investigation, in violation of Title 18, Section 1510, United States Code.

A TRUE BILL
/s/ DAVID C. LOUCK, JR.
FOREMAN

.....
EUGENE E. SILER, JR.
UNITED STATES ATTORNEY

SEARCH WARRANT

[COVER PAGE OMITTED]

THE COMMONWEALTH OF KENTUCKY
MAGISTRATE COURT

The affiant, London Owens whose post office is Hazard, Kentucky, state of Kentucky, states that he is a citizen and that he has reasonable grounds to believe, and does believe that Pearl Combs has in his possession approx. 98 cases of Seagrams 7 Crown Pints whiskey, in a house, building or premises, owned, operated or controlled by Pearl Combs and located and described as follows: Five (5) Room Wood Frame House located 1.5 Miles in Gorman Hollow and is located on the left side of the Road travelling West of of Kentucky 451., and all other buildings such as barns, garages, storage buildings that May be located on the premises of the said Pearl Combs.

That he bases the foregoing affidavit and his belief and grounds for the same upon the following facts and for the following reasons:
Has reasonable grounds from information from an informant that this whiskey was transported to the above described premises.

Affiant /s/ LONDON OWEN

Subscribed and sworn to before me by London Owens this 20th day of Sept. 1969.

/s/ JESSE P. ENGLE, Judge

SEARCH WARRANT
THE COMMONWEALTH OF KENTUCKY
Magistrate Court

To the Sheriff or any Constable or Police Officer of the State of Kentucky.

You are commanded to search the following premises, to-wit:

One only Five (5) Room Wood Frame House Located 1.5 miles in Gorman Hollow and is located on the left side of the road travelling west off of Kentucky 451., and all other buildings such as barns, garages, storages buildings that may be located on the premises of the said Pearl Combs.

said to be in the possession of Pearl Combs for the detection of Approx. 98 case of Seagrams 7 Crown Pints Whiskey and you will seize any such above described articles and you will arrest the person or persons in charge or possession of such premises and bring such person or persons before me or some other judge or justice of the peace to be dealt with according to law, and you will then and there make due return of this writ.

Given under my hand as Judge of Magistrate Court on the 20th day of September, 1969.

./s/ JESSE P. ENGLE, Judge

Executed by searching the described premises and finding 26 cases of pints Seagrams 7 Crown Whiskey.

9/20/69 /s/ L. T. OWENS

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
MARCH SESSION 1970
COVINGTON

[TITLE OMITTED]

MOTION TO SUPPRESS EVIDENCE

(Filed September 18, 1970)

Now comes the defendants, Elisha Combs, Pearl Combs and Raymond Combs, and move the Court to suppress the evidence herein for the reason that the same was obtained in violation of his constitutional rights and guarantees.

.....
Attorney for Defendants

Fourth Amendment, Constitution of the United States
Mapp v. Ohio, U. S. Supreme Court, 367 U. S. 343
U. S. v. Spinelli, 393 U. S. 410
U. S. v. Aguilar, 378 U. S. 108
U. S. v. Lassoff, 147 Fed. Sup. 944
U. S. v. Elkins, 364 U. S. 206

[CERTIFICATE OF SERVICE OMITTED]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY

(At Covington, September 25 and 28, 1970)

[TITLE OMITTED]

EXCERPTS FROM TRANSCRIPT OF TESTIMONY OF WITNESSES REQUESTED BY GOVERNMENT

Before:
His Honor, Mac Swinford, Judge of Said Court

* * *

[34] **Jimmy Martin**

being called as a witness in behalf of the Government, first being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Eugene E. Siler, Jr.
United States Attorney

Q State your name.
A Jimmy Martin.
Q And where do you live, Jim?
A 407 West Ninth, Newport, Kentucky.
[35] Q Now, how long have you lived there?
A Oh, about eleven months.
Q Now, do you know the defendant Elisha Combs?
A Yes.
Q Do you know the defendant Raymond Combs?
A Yes.
Q Do you know the defendant Pearl Combs?

A Yes.

Q How long have you known the Combs family?

A I have know Ray a long time.

Q A long time?

A Yes.

Q How long?

A Oh, roughly guessing, I would say about seven or eight years.

Q That is the same as Raymond Combs, the defendant?

A Raymond, yes.

Q How long have you known Elisha?

A I had met him a long time ago. I didn't know him too well until about seventeen, eighteen months ago.

[36] Q All right. Now, James, with regard to the matter which is on trial here today, will you direct your attention to around about the latter part of July of 1969 and tell whether you ever had occasion to go to your sister's house, Janet Ballard?

A Yes.

Q Did you ever go there?

A Yes.

Q And what did you see at the house?

A She told me she had something in the basement she wanted to show me, so I went down and looked and I seen the whiskey down there.

Q All right. And do you recall what day of the week it was or anything?

A No.

Q Do you recall what kind of whiskey this was you saw at her house?

A Yes.

Q What kind was it?

A It was pints of whiskey, Seagram's Seven Crown.

Q All right, was it in open or sealed up boxes?

A Sealed up in boxes.

MR. SILER: I will ask that Exhibit No. 4 be passed to him.

[37] (Reporter's note: Government's Exhibit No. 4 was given to the witness.)

Q Would you look at that emblem and see if you can recognize that as being on any of the boxes that you saw?

A Yes, sir.

Q And did you see it on some of the boxes?

A Yes, sir.

Q And was it white in color or some other color?

A It was on an orange — it was printed on an orange block.

Q All right. Now, when did you first know about this whiskey?

A The last part of July.

Q Did you know about it before you saw it there in her house?

A No.

Q Now, after you saw it, did you talk to her, did you tell her anything about it?

A Yes, I told her I had seen on television and I heard it on the radio about it being stolen.

Q All right. Did you advise her to do anything?

A Yes, I advised her to call him [38] and tell him to get it out of the basement.

Q Now, what time of day was this, do you recall?

A That was late in the evening.

Q Did you have any conversation with Elisha concerning this whiskey in her house?

A Yes. He called me at home.

Q He called you at your house?

A Yes.

Q And what did he say to you?

A He said he had a lot of whiskey, that he would make a lot of money on.

Q And what did he say with regard to what you were going to do with it? Did he say anything about taking it anywhere?

A I would like to hear that again. I didn't understand.

Q Well, what did you and Elisha do with this whiskey?

A We went up to my sister's and got it.

Q All right.

A And we took it to his wife's house on Columbia Street, in Newport.

Q Now, when you saw it at Janet's house, was that in Newport, too, or in Bellevue?

[39] A No, that was in Bellevue.

Q Was that in Campbell County?

A Yes.

Q And how many cases did you see there at Janet's house?

A Forty.

Q Now, how did you transport these cases from Janet's house to Elisha's wife's house?

A In cars.

Q In cars?

A Yes.

Q Did you use your car?

A Yes.

Q Who else's car was used?

A Elisha Combs'.

Q All right. And when you got to his wife's house, where did you put the whiskey?

A In her basement.

Q All right. Did you take some or all of it out of Janet's house?

A Took it all.

Q And was that all that was at his wife's house or was there some more there when you —

A There was more whiskey at her house.

Q Do you know how much more?

A No, roughly guessing, I would say [40] 70 or 80 cases.

Q 70 or 80 cases. Did that include what you brought?

A Yes.

(Reporter's note: An off the record discussion was held between defense counsel and counsel for the Government.)

Q Now, after you had talked to Janet that day, did you call Elisha or did he call you?

A He called me.

Q And after this was taken to the wife's house, what — did Elisha say anything more about it or what did you do that morning?

A Nothing at that point. We just went home then.

Q Now, later on that week, did you have occasion to discuss with Elisha anything about this whiskey?

A The only thing about selling it is all.

Q All right. What did he tell you about whether he was going to take it any place or do anything with it?

A Yes, he said he got a phone call that the heat was on and he had to move it.

Q Got a phone call the heat was on?

A Yes.

[41] Q Then what did you do after that?

A We went up and loaded up the whiskey.

Q And where did you load the whiskey this time?

A On Columbia Street.

Q His wife's house?

A Yes.

Q And what did you load the whiskey in?

A G.M.C. pick-up truck.

Q All right. What color was it?

A Red.

Q Whose truck was it?

A Elisha Combs'.

Q Was any one else with the two of you at that time?

A No.

Q Just the two of you?

A Just the two of us.

Q And how was it placed in the truck, that is, was that all you put in there or did you put anything else in there?

A We just stacked whiskey in the truck was all.

Q Was it covered over with anything?

[42] A A couple of old tarpaulins.

Q All right. Was anything else placed on top of the tarpaulin.

A Rocks.

Q And then do you recall what day of the week this was?

A That was on a Thursday night, late in the morning, or Friday morning real early is what it was.

Q After midnight?

A Yes.

Q And where did you take this truck load of whiskey?

A To Hazard, Kentucky.

Q And whereabouts in Hazard?

A To Elisha Combs' father's farm.

Q Now, when it was brought to Elisha Combs' father's farm — what is Elisha's father's name, incidentally?

A Pearl Combs.

Q Had you ever met Pearl Combs before you went down there?

A Just a couple of times.

Q Where was this whiskey put?

A In an old shed about fifty feet away from the house.

Q All right. Did any one indicate [43] whose shed it was?

A No.

Q Was it close to the premises then?

A Yes.

Q Did you rent the shed from Mr. Combs or anybody?

A No.

Q It didn't belong to you then?

A No.

Q How many of the cases that you took to the truck were placed there in the shed at Pearl Combs' house?

A All of them.

Q What, if anything, was said about the cases?

A We just loaded them in the shed and went in for breakfast is all.

Q Was Pearl there at the time?

A Yes.

Q Did he see you all unloading the truck?

A Yes.

MR. HOPKINS: Well, of course, I will have to object, I guess, to this. This may be a conclusion on his part.

THE COURT: What he saw?

[44] MR. HOPKINS: Well, all right, I will go into the circumstances on cross-examination.

THE COURT: He said he saw them unloading from the truck. He can say what he saw.

Q After this was unloaded and you ate your breakfast, what did you do?

A Laid down on the bed for a couple of hours, about two and a half hours.

Q Then where did you go?

A We loaded a couple — or Ace got a couple — Elisha Combs got a couple of tires out of the back room and put them in the truck and then we went down and stopped at a garden and then we went on in town and stopped at an oil station and then I started driving and drove all the way home.

Q Were you paid anything for this?

A No.

Q Did you ever go back to this location at Hazard, Kentucky?

A Yes.

Q And did you go back there with regard to the whiskey?

A Yes.

Q And what did you do there?

A I went down with the Federal, F.B.I.

Q All right. Is this Mr. Glossup, [15] was he with you?

A Yes.

Q And when did you tell the F.B.I. about this?

A I couldn't tell you exactly the date.

Q Well, was it after you took the stuff down to Pearl's house?

A Yes.

A And when you were with the F.B.I. at this place in Hazard, Pearl Combs' house, was this when a search warrant was executed?

A We went up there, then we went back to the police barracks and that is where they left me and they went back.

Q For what purpose did you go there the first time — I mean this time that you returned with Mr. Glossup?

A To show them where the whiskey was at.

Q And when you first talked to Mr. Glossup, did you tell him what you knew about this matter?

A Yes.

Q And then after this, did you have some condition about the way you provided the information at that time? That is, did you want them to reveal your name [46] or keep your name confidential or what?

A Wanted them to keep it confidential.

Q When did you ever change your mind about that, if you ever did? What caused you to change your mind? Did you ever change your mind?

A Yes.

Q And what caused you to do that?

A A fight.

Q All right. Now, you mentioned a fight. Would you state what happened on October the 4th, 1969, concerning this matter and Elisha Combs?

A You mean the fight?

Q Yes, sir.

A Well, we —

MR. HOPKINS: (interposing) Would you talk just a little bit louder, please?

THE COURT: Talk louder, Jim, so the jurors on the back row and Mr. Hopkins and everybody can hear you. You can speak out louder.

A Me and my wife sit and watched television that night and then she went upstairs and then I went over to my sister's at 2 o'clock and I knocked on the door and I talked to my sister.

Q What sister are you talking about?

A About Helen Jordan. And I went back across the walk to my house and stayed there until a [47] quarter of three and at a quarter of three I decided to take a ride up around the court house, which I went up around the court

house and went over and crossed over to Saratoga and went up Ninth and come over to Ninth and Monmouth and I ran into Elisha Combs and them coming the opposite way.

Q O.K. Then what did you do?

A I turned down Monmouth Street and they followed me. They followed me all the way down to my house and I got out of my car and when I got out of my car, started to walk back and Elisha Combs got out on the passenger side and Ace or Raymond Combs got out on the driver's side and Elisha Combs come around. He asked me a question and then took a swing at me.

Q All right. And then who was with Elisha at this time?

A Raymond Combs.

Q All right. And is that the defendant Raymond Combs?

A Yes.

Q And was any one else with them?

A No.

Q Now, after Elisha took the swing at you what did you do?

A I throwed up my arm and swung back at him.

Q And then what happened?

[48] A Raymond grabbed me around the neck from the back and hit me in the back.

Q All right. Now, did they say anything to you during all this time?

A They said that's for squealing on them and the TV.

Q That is for what?

A Squealing on them and a TV.

Q I didn't understand. Squealing?

A Telling on them.

Q And then how many time were you hit, would you say?

A Quite a few times, because my head looked like a football.

Q All right. Did they just use their hands or what? Did they have any weapons that you ever saw?

A Well, when Ace or Elisha Combs come around the car it looked like he had a knife and that is why I was watching him and when he swung at me that is when I thought he swung at me with a knife.

Q Now, did you have any weapons yourself?

A No.

Q Was any one else with you?

A No.

[49] Q And after they hit you, were you standing up all the time or in what position were you?

A When he grabbed me he bent me over backwards like and hit me in the back and then Elisha Combs grabbed my hands and forced me over the side of my car and bent me over my car and started beating me in the back.

Q All right. Would you come down here and demonstrate on this table what position you were in. Use that table as the car hood. Show what position you were in at the time.

(Reporter's note: The witness left the witness stand and walked to a table in front of the jury box.)

A Well, it was the trunk of the car, the trunk of the car was longways, they bent me over the car like this (indicating) and bent my head sideways, like this (indicating) and held me.

MR. SILER: All right. You may return.

(Reporter's note: The witness returned to the witness stand.)

Q Now, did you receive any cuts or bruises as a consequence of this?

A Yes.

Q And where were they?

A Cut right here (indicating left side of face).

Q All right, will you turn around to the jury and show — is there still a place there?

[50] A Yes, a scar (indicating on face).

Q Was this a bruise or bloody or what?

A That was laid wide open.

Q All right. And where did you go after this happened?

A To the hospital.

Q All right. How did you get loose there?

A I jerked myself loose and took off running.

Q Where did you run to?

A To my house.

Q And after you got in the house, how soon after that did you go to the hospital?

A Between — I would say about ten minutes.

Q All right. And how long did you stay at the hospital?

A I would say about an hour and a half or two hours.

Q Now, did you see any policemen at the hospital on that occasion?

A Not at the hospital, at my house.

Q And what were their names, do you know?

A No.

[51] Q You just saw some?

A Yes.

Q Did you talk to Janet after this happened?

A Yes. She came down to the house, out to the hospital.

Q Now, when you first went to the F.B.I., did you just go straight to the F.B.I. or did you talk to some one else before?

A I talked to some one else before.

Q Now, who was that?

A Grover Johnson.

A Night Chief of Police in Newport.

Q Did you know him before this occasion?

A Yes.

Q Did you act on his advice when you went to the F.B.I.?

A Yes.

Q Now, James, did you have occasion to see Elisha or Raymond, either one, this week?

A Yes.

Q Where was that?

A I was driving across Eighth Street and Ray come out of Elisha's yard and flagged me down.

Q And what conversation did he [52] relate to you at that time?

A He asked me —

MR. HOPKINS: (interposing) Who are we talking about?

MR. SILER: Ray.

Q Is that Raymond, the defendant here?

A Yes.

Q What did he say to you at that time?

A He asked me to take it easy on him in court.

Q What else was said? What did you say to him?

A I told him if he would tell the truth I would try and help him.

Q What did he say, if anything?

A He said he couldn't change his story because he would be perjuring himself.

Q And did he say anything else about doing anything for you?

A He said if I would take care of him now that he would help me out later.

Q And did you ever have occasion to — did you ever have occasion to be at the 500 Club and be there with Elisha Combs and have a scrape with him?

A I have been there with him but I didn't have a scrape with him.

[53] Q Were you on this evening at the 500 Club?

A No.

Q That is the night you got hurt?

A No.

Q Did you ever receive any money from the sale of this whiskey that you saw?

A None.

MR. SILER: You may ask.

• • •

[169] **Elisha Combs**

being called as a witness in his own behalf, first being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. William F. Hopkins
Counsel for the Defendants

MR. HOPKINS: Please speak out loudly.

Q What is your name?

A Elisha Combs.

Q Where do you live?

A 802 Monroe, in Newport, Kentucky.

Q Do you own that building there?

A My brother does.

Q How long have you lived there?

[170] A About a year and a half, two years.

Q And you work?

A Yes, I do.
Q For whom?
A Fisher Body, in Norwood, Ohio.
Q And what do you do there?
A I'm assembly line worker.
Q A what?
A Assembly line worker.
Q What does that mean?
A We build Chevrolets, you know, I install parts on them.
Q How old are you now? How old are you?
A Thirty-seven.
Q How long have you been working there at Chevrolet?
A Eighteen years.
Q Started there when you were nineteen?
A Uh-huh.
Q And you are working there now?
A Yes, sir.
Q Are you married?
A Yes, sir.
Q Are you and your wife living together?
[171] A No.
Q How long have you been separated?
A Since 1960.
Q For ten or eleven years?
A Yes, sir.
Q What is the relationship between you and your separated wife?
A It's pretty bad. We don't even talk.
Q You don't speak?
A No, we don't.
Q This Janet Ballard, do you know her?
A Yes, I do.
Q How long have you known her?

A I'd say for ten or twelve years or longer.

Q I'm speaking about the sister of Jim Martin.

A Yes, sir.

Q To expedite this matter, you heard her testimony here that you called her on a certain day and said that you had some whiskey. Do you recall that testimony?

A Yes, sir.

Q Did you call her that day?

[172] A No, sir.

Q Did you have any whiskey?

A No, sir.

Q What do you know about this whiskey? Did you ever see it shortly thereafter?

A Yes, sir.

Q Where? Tell the jury when and where you saw it?

A In Janet Martin's living room.

Q How did you happen to be over there?

A She called me and asked be to bring a weed sickle to cut some weeds with.

Q You mean a sickle to cut weeds?

A Uh-huh.

Q And did you take it over to her?

A Yes, I did.

Q And when you entered the apartment, is that when you saw these cases of liquor?

A Yes, it was.

Q Was there any conversation between you and she in reference to that liquor?

A Yes, sir.

Q What was it?

A I asked her about the whiskey, you know, who it belonged to and she said it belonged to Jim [173] Martin and Charles Chapman.

Q Charles Chapman?

A Yes.

Q Was there any conversation in reference to who was buying the liquor?

A Yes, sir. They said they was going to sell it to Jim Russelburg, which owns two carry-outs, one in Dayton, Kentucky, and owns one at Seventh and Columbia or Sixth and Columbia, in Newport, Kentucky.

Q Jim Russell?

A Jim Russelburg.

Q Do you know who owns the house or home where Janet lives?

A Yes, I do.

Q Who?

A Jim Russelburg.

Q Well, do you know from conversation with Janet whether or not she is paying any rent or it is rent-free or what?

A No, I don't.

Q Was there any other conversation about the whiskey or liquor?

A No, sir.

Q Did you at any time touch any liquor or cases of liquor that were there?

A No, sir.

[174] Q I want to next go to the early morning of October the 4th or shortly before that, say three or four or five days before that. I will ask you whether or not Janet Ballard came to your house?

A Yes.

Q For what reason or purpose?

A Well, she came to my house and said that Jim was getting in trouble, that the heat was getting on him over that whiskey, said it had been stolen and she said that he had went to Grover Johnson.

Q Now, wait a minute. He is the Night Chief?

A That's right.

Q At Newport?

A And said that they was trying to put the blame off on me, over the whiskey.

Q Now, that is what Janet told you?

A Yeah.

Q What did you do about that?

A Well, I went to the Newport Police Station and asked them if I could have the phone number of the F.B.I. in Covington, Kentucky.

Q For what purpose?

A Well, I was going to explain it to them, you know, and tell them what she had told me and report it about the whiskey being there.

[175] Q Did they give you a telephone number?

A Mr. Simmons, of the Newport Police Station, gave me a telephone number and I tried at different times and I could never get no answer. It was the wrong number or something, every time I would try to reach the F.B.I.

Q Mr. Glossup came to you, this gentleman seated here (indicating). Did he give you that number.

A Yes, sir.

Q Was that the original trip you made?

A Yes, sir.

Q Given to you by the Newport Police?

A Yes, sir.

Q Now, I want to direct your attention to the early morning of October the 4th. Where were you at or about 2:00 or 2:30 in the morning?

A I was at the 500 Club at Ninth and Brighton in Newport.

Q The 500 Bar?

A Yes.

Q How long had you been in the bar?

A About thirty minutes.

[176] Q You heard your brother testify he was with you, is that correct?

A Yes, sir.

Q How much had you had to drink?

A We had about two beers.

Q Were you sober?

A Yes, sir.

Q When they closed at 25 after 2 or 2:30, did you and your brother, Raymond, leave there?

A Yes, we did.

Q Well, what happened when you went outside?

A Well, we went out, you know there was several other people, but Raymond and I was together and Jim Martin was across the street in his car and I told Ray that over there was Jim, you know, which he had met us there before. That wasn't the first time he came down. He came down before and when we went over I asked Jim how did he come out in court today.

Q What were you talking about?

A Well, they had arrested him for some stolen merchandise, you know, and he was supposed to have been in court that day.

Q Jim?

A Yes, sir.

Q Nothing to do with this case?

A No. And I asked him how he [177] come out in court today and he said, "They put me on open docket," and then he said, "What's this I hear you've been writing to the F.B.I., squealing to the F.B.I.?" And then he hauled off and hit me in the mouth and busted my mouth and nose.

Q Did he hit you hard?

A Pretty hard, hard enough to bring the blood.

Q What did you do?

A Well, I busted him back and he drew a gun and hit me across the hand.

Q Where was your hand when you got hit?

A Well, when he swung at me with that gun, I threw my hands up to keep from hitting me across the face and he hit my hand.

Q Where was your brother?

A He ran in and separated us and said, "What in the world's wrong? You boys are going to get in trouble — you guys are going to get in trouble."

Q Was anything said by you or your brother at that time or any time with reference to intimidating Jim Martin or stopping him from testifying in this Federal case?

A No, sir, none whatsoever, nothing whatsoever.

[178] Q You weren't even arrested on the Federal case at that time, were you?

A No, sir.

Q Well, to save time, did you leave there, did you go home and get your face washed and fix up a little bit?

A Yeah, I went home.

Q Did you go to police headquarters?

A Yes, I did.

Q And they told you, as your brother said, to come back at 9 o'clock and get a warrant?

A Yes, sir.

Q Then tell about seeing, if you did, something happened before the Pink Pussy Cat.

A As we went up, the detective's car was sitting there and they was a-coming out, you know, and they was just coming out the door and I said, "There is Mr. Faulkner and Grover Johnson," so I told him to park, you know, and I would talk to Don Faulkner, you know, and tell him that Jim had a gun, you know, and ask for a little protection.

Q Now, so far as sobriety, what was —

A Do what?

Q What is the Night Chief's name?

A Grover Johnson.

Q In what state of sobriety was he?

A They came over to our automobile [179] which was parked across the street and he was "blind drunk" and I was talking to Don Faulkner because I didn't want to talk to him in the first place and he did all the talking. I told him what happened and he said, "If you boys don't want to get in trouble, you better get out of here," and he was "blind drunk", his eyes was real glassy.

Q Then you left?

A We did.

Q And you went to the hospital?

A We did.

Q I don't want to lead you, but to hurry this thing up, did they treat you?

A Yes, sir.

Q Did you go back later to have a cast put on your hand?

A At 10 o'clock the next day.

Q How long was the cast on your hand?

A Oh, about six weeks.

Q Jim Martin has testified here that you and he in your truck went to — took this whiskey from Janet Ballard's apartment house up to your father's place and put it in a shed. Is that true or false?

A That's false.

Q In reference to Janet Ballard, during the past say three months, how many times has she come over to your house?

[180] A I would say approximately twenty times.

Q For what purpose?

A Well, every time Mr. Glossup would talk to her, the

Prosecuting Attorney or Grover Johnson, whoever it might be, she would come and tell me just exact words they would say, now, and I told her she was going to get in trouble, you know, running up there and carrying messages like that, because you are not supposed to do things like that.

Q She was telling you everything that happened?

A Word by word.

Q Whoever talked to her?

A Word for word.

Q Is that correct?

A That's right.

Q Have you been intimate with her? Have you gone to bed with her?

A Yes, I have.

Q On many occasions?

A Yes, sir.

Q I want to call your attention to possibly two or three or four months — I don't know, you know better than I — when you were in the 500 Bar and she was there and a fellow named, I think, Don Harmon. Do you know a Don Harmon?

[181] A Yes, I do.

Q Do you recall that incident?

A Yes, I do.

Q Will you tell the jury about that, what it was about?

A Well, I was in the 500 Club, a-talking to Don Harmon and the guy at the bar told me some blonde was in —

MR. SILER: (interposing) Object to what the man at the bar said.

MR. HOPKINS: Don't repeat the conversation. Pardon me, I'm sorry.

A (continuing) I was in the 500 Club and Janet Ballard came in and she came over and asked us to take a table with her and have a couple of drinks.

Q Did you?

A Yes, we did.

Q All right. Now, I want you to tell this jury what Janet Ballard said to you in reference to her testimony here.

A She apologized to me more than once and she cried about it and said she did it to save her brother's neck and said she had made a statement to Mr. Glossup and she said that she was afraid she had got herself in trouble about it, you know, and I told her, I said, "Janet, all you have got to do is tell the truth." I said, "That is [182] all you have to do when you get in the seat." I said, "Them statements don't mean nuthin', what you told them." I said, "Just tell the truth, that's all you have to do."

Q Did she talk anything to you on those twenty trips to your home about shock treatments?

A Yes, she said she had been sick and had had shock treatments, several of them, I don't know just how many she said she had had.

MR. HOPKINS: You may cross-examine.

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NOTATION WITH REFERENCE TO OPINIONS AND ORDERS OF SIXTH CIRCUIT COURT OF APPEALS

The complete text of the Opinion filed on August 12th, 1971, by the United States Court of Appeals for the Sixth Circuit may be found on Page 6 of the printed "Petition for a Writ of Certiorari" to the United States Court of Appeals for the Sixth Circuit filed with the Supreme Court of the United States on October 10th, 1971.

A complete text of the "Order Denying a Rehearing" by the United States Court of Appeals for the Sixth Circuit may be found on Page 9 of the "Petition for a Writ of Certiorari" to the United States Court of Appeals for the Sixth Circuit filed with the Supreme Court of the United States on October 10th, 1971.

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543

E. ROBERT SEAVER
Clerk of the Court

January 10, 1972

William F. Hopkins, Esq.
414 Walnut Street
Cincinnati, Ohio 45202

RE: Elisha Combs v. United States
No. 71-517

Dear Mr. Hopkins:

The Court today took the following action in the above case:

"The petition for a writ of certiorari is granted."

Enclosed is a memorandum describing the time requirements and procedures under the Rules.

The additional docketing fee of $50, Rule 52(a) is due and payable.

Very truly yours,

E. ROBERT SEAVER, Clerk
By /s/ HELEN K. LOUGHRAN
(Mrs.) Helen K. Loughran
Assistant Clerk

AIR MAIL
Enclosures

Supreme Court of the United States

No. 71-517 ---, ~~October Term,~~ 19

Elisha Combs,

Petitioner,

v.

United States

ORDER ALLOWING CERTIORARI. Filed January 10 -------- , 19 72.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Sixth ---------- Circuit is granted.